

Scott Walker
Governor

Jon E. Litscher
Secretary



State of Wisconsin
Department of Corrections

Division of Juvenile Corrections
3099 E. Washington Avenue
Post Office Box 8930
Madison, WI 53708-8930
Telephone (608) 240-5900
Fax (608) 240-3370

John D. Paquin
Administrator

ADMINISTRATOR'S MEMO TO COUNTIES

MEMO # 17-05

DATE: July 12, 2017

TO: County Departments of Human/Social Services Directors

FROM: John D. Paquin, Administrator 
Shelby A. B. McCulley, Assistant Administrator 

SUBJECT: Update on ACLU Lawsuit and Preliminary Injunction

As we previously reported to you, on January 23, 2017, the ACLU of Wisconsin, Juvenile Law Center, and other attorneys representing several youth filed a complaint against the DOC seeking declaratory and injunctive relief. The lawsuit, as amended, is focused on four specific practices: use of restrictive housing as a disposition for conduct rule violations; use of incapacitating agents (oleoresin capsicum, or "pepper spray"); use of mechanical restraints; and use of strip searches. Each of these practices is governed by Wisconsin Administrative Code.

Shortly after the ACLU lawsuit was filed, the ACLU also filed a motion for preliminary injunction. Although the topics of the injunction are also covered in the main lawsuit, an injunction is typically narrower in scope and covers the period before a final order or settlement. The motion requested specific actions related to the use of restrictive housing, incapacitating agents, and mechanical restraints.

A hearing was held on the request for preliminary injunction on June 22 and 23. Rather than issue an injunction order immediately, the judge ordered that the DOC and the ACLU submit a proposed injunction to the court by July 7, including both the DOC and ACLU's positions for those items on which the parties could not agree. The judge's written order, along with his comments in the court, laid out the parameters for the discussions between the DOC and the ACLU.

Over the course of the following two weeks, we worked closely with our attorneys to determine a proposed plan of action that we believed met the judge's requirements while being feasible to implement and maintaining a safe and secure environment for staff and youth.

On July 10, 2017, Judge Peterson issued the Preliminary Injunction order, which is included with this memo. We are pleased that Judge Peterson adopted most of the DOC's recommendations, including many of the required implementation dates. Therefore, after consultation with our attorneys, we have decided that we will not appeal the order or request a stay. This will allow us to fully turn our attention to implementing the required changes.

This is a major effort, much of which will occur in a relatively short period of time. The order contains many requirements, some with implementation dates that are earlier than we requested. However, we believe that DJC and CLS/LHS can successfully rise to this challenge. As we have previously communicated, DJC has already committed to reducing the use of restrictive housing, OC spray, and restraints. We know that, if carefully and thoughtfully implemented, these reductions will ultimately improve both safety and outcomes. Our efforts over the past eighteen months have laid a solid foundation as we have already made a number of changes that are consistent with the direction given by the order and some of the specific required steps are already well underway.

We are absolutely committed to moving forward in these efforts and continuing to improve outcomes for youth. While there will be additional steps in the legal process, we look forward to continuing discussions with the ACLU and the court that will ultimately bring this case to a conclusion that is successful for all.

We will continue to engage and seek input from counties, legislators, judges, law enforcement, and other stakeholders. We look forward to collaborating with you to create better futures for the youth in our care and we encourage you to forward this memo on to any county stakeholders, including those listed above, to further share this information. Please contact us if you have any questions.

Attachment: Preliminary Injunction

Cc: Jon E. Litscher, Secretary, DOC
Cathy A. Jess, Deputy Secretary, DOC
Eloise Anderson, Secretary, DCF
Lisa Marks, Deputy Secretary, DCF
Brad Wassink, Assistant Deputy Secretary, DCF
Linda Seeymeyer, Secretary, DHS
Tom Engels, Deputy Secretary, DHS
Jenny Malcore, Assistant Deputy Secretary, DHS
Fredie-ellen Bove, Administrator, DCF/DSP
Ron Hermes, Director, Bureau of Permanence and Out of Home, DCF/DSP
Wendy Henderson, Director, Bureau of Youth Services, DCF/DSP
Emily Tofte, Section Chief, Bureau of Youth Services, DCF/DSP
John Tuohy, Director, Bureau of Regional Operations, DCF/DES
David Sorenson, Section Chief, Child Welfare Licensing Section, DCF/DSP
Greg Van Rybroek, Director, DHS/MJTC
DHS/DCF Area Administrators
DHS/DCF Human Service Area Coordinators
DOC/DJC Management staff
County Youth Aids contacts
Court-attached juvenile court intake offices